

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 13, 2010

**SENATE BILL**

**No. 1040**

---

**Introduced by Senator Padilla**

February 12, 2010

---

An act to amend Section 281 of the Public Utilities Code, relating to telecommunications, ~~making an appropriation therefor~~, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Padilla. Telecommunications universal service programs: California Advanced Services Fund.

The existing federal Telecommunications Act of 1996 establishes a program for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined. Existing law, until January 1, 2013, establishes the California Advanced Services Fund (CASF) in the State Treasury, and requires a

surcharge, which is imposed by the commission and collected through retail telecommunications customers' bills, to be deposited in that fund. Existing law prohibits the commission from collecting more than \$100,000,000 through the surcharge. Existing law requires the commission to develop, implement, and administer the CASF to provide for transfer payments to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in a specified decision of the commission. Existing law requires the commission to conduct both a financial audit and a performance audit on the implementation and effectiveness of CASF and to report its findings to the Legislature by December 31, 2010.

This bill would extend the operation of these provisions ~~until January 1, 2018~~ *indefinitely*, and would prohibit the commission from collecting more than \$225,000,000 through the CASF surcharge. The bill would require that not more than \$25,000,000 of the funds in CASF be encumbered during a fiscal year ~~and would continuously appropriate \$25,000,000 per fiscal year to the commission~~, beginning with the fiscal year beginning July 1, 2010, and continuing through the 2015–16 fiscal year. The bill would require the commission to conduct an interim and final financial audit and interim and final performance audit on the implementation and effectiveness of CASF and, to report *to the Legislature* its interim findings by December 31, 2010, and its final findings by April 1, 2017.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: ~~yes~~ *no*. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 281 of the Public Utilities Code is
- 2 amended to read:
- 3 281. (a) The commission shall develop, implement, and
- 4 administer the California Advanced Services Fund to encourage
- 5 deployment of high-quality advanced communications services to
- 6 all Californians that will promote economic growth, job creation,
- 7 and the substantial social benefits of advanced information and
- 8 communications technologies, as provided in Decision 07-12-054

1 and Decision 09-07-020 and this section. The commission shall  
2 establish the following accounts within the fund:

3 (1) The Broadband Infrastructure Grant Account.

4 (2) The Rural and Urban Regional Broadband Consortia Grant  
5 Account.

6 (3) The Broadband Infrastructure Revolving Loan Account.

7 (b) (1) All moneys collected by the surcharge authorized by  
8 the commission pursuant to Decision 07-12-054, whether collected  
9 before or after January 1, 2009, shall be transmitted to the  
10 commission pursuant to a schedule established by the commission.

11 The commission shall transfer the moneys received to the  
12 Controller for deposit in the California Advanced Services Fund.

13 (2) All interest earned on moneys in the fund shall be deposited  
14 in the fund.

15 (3) The commission shall not collect moneys, by imposing the  
16 surcharge described in paragraph (1) for deposit in the fund, in an  
17 amount that exceeds a total amount of two hundred twenty-five  
18 million dollars (\$225,000,000). Not more than twenty-five million  
19 dollars (\$25,000,000) may be encumbered, per fiscal year, from  
20 the fund, beginning with the fiscal year that begins July 1, 2010,  
21 and continuing through the 2015–16 fiscal year.

22 ~~(4) Notwithstanding Section 13340 of the Government Code,~~  
23 ~~beginning with the fiscal year that begins July 1, 2010, and~~  
24 ~~continuing through the 2015–16 fiscal year, the money in the fund~~  
25 ~~and the accounts within the fund are hereby continuously~~  
26 ~~appropriated to the commission without regard to fiscal years for~~  
27 ~~the purposes enumerated in this section. The funds shall be~~  
28 ~~deposited in the following amounts in the following accounts for~~  
29 ~~each fiscal year:~~

30 (A) Twenty million dollars (\$20,000,000) into the Broadband  
31 Infrastructure Grant Account.

32 (B) Two million dollars (\$2,000,000) into the Rural and Urban  
33 Regional Broadband Consortia Grant Account.

34 (C) Three million dollars (\$3,000,000) into the Broadband  
35 Infrastructure Revolving Loan Account.

36 (c) (1) ~~All moneys appropriated from the California Advanced~~  
37 ~~Services Fund to the commission may only be expended for the~~  
38 ~~in the California Advanced Services Fund shall be available, upon~~  
39 ~~appropriation by the Legislature, to the commission for the~~  
40 ~~program administered by the commission pursuant to this section,~~

1 including the costs incurred by the commission in developing,  
2 implementing, and administering the program and the fund.

3 (2) Notwithstanding any other law and for the sole purpose of  
4 providing matching funds pursuant to the federal American  
5 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any  
6 entity eligible for funding pursuant to that act shall be eligible to  
7 apply to participate in the program administered by the commission  
8 pursuant to this section, if that entity otherwise satisfies the  
9 eligibility requirements under that program. Nothing in this section  
10 shall impede the ability of an incumbent local exchange carrier,  
11 as defined by subsection (h) of Section 251 of Title 47 of the  
12 United States Code, that is regulated under a rate of return  
13 regulatory structure, to recover, in rate base, California  
14 infrastructure investment not provided through federal or state  
15 grant funds for facilities that provide broadband service and  
16 California intrastate voice service.

17 (d) Moneys in the Rural and Urban Regional Broadband  
18 Consortia Grant Account shall be available for grants to eligible  
19 consortia to fund the cost of broadband deployment activities other  
20 than the capital cost of facilities. An eligible consortium may  
21 include representatives of organizations, including, but not limited  
22 to, local and regional government, public safety, K-12 education,  
23 health care, libraries, higher education, community-based  
24 organizations, tourism, parks and recreation, agricultural, and  
25 business, and is not required to have as its lead fiscal agent an  
26 entity with a certificate of public convenience and necessity.

27 (e) Moneys in the Broadband Infrastructure Revolving Loan  
28 Account shall be available to finance capital costs of broadband  
29 facilities not funded by a grant from the Broadband Infrastructure  
30 Grant Account. The commission shall periodically set interest rates  
31 on the loans based on surveys of existing financial markets.

32 (f) The commission shall conduct an interim and final financial  
33 audit and an interim and final performance audit of the  
34 implementation and effectiveness of the California Advanced  
35 Services Fund to ensure that funds have been expended in  
36 accordance with the approved terms of the grant awards and loan  
37 agreements and this section. The commission shall report its interim  
38 findings to the Legislature by December 31, 2010. The commission  
39 shall report its final findings to the Legislature by April 1, 2017.  
40 The reports shall also include an update to the maps in the final

1 report of the California Broadband Task Force and data on the  
2 types and numbers of jobs created as a result of the program  
3 administered by the commission pursuant to this section.

4 ~~(g) This section shall remain in effect only until January 1, 2018,~~  
5 ~~and as of that date is repealed, unless a later enacted statute, that~~  
6 ~~is enacted before January 1, 2018, deletes or extends that date.~~

7 ~~SEC. 2. The Public Utilities Commission may continue to~~  
8 ~~administer after the repeal of Section 281 of the Public Utilities~~  
9 ~~Code outstanding loans made from the Broadband Infrastructure~~  
10 ~~Revolving Loan Account.~~

11 ~~SEC. 3.~~

12 *SEC. 2.* This act is an urgency statute necessary for the  
13 immediate preservation of the public peace, health, or safety within  
14 the meaning of Article IV of the Constitution and shall go into  
15 immediate effect. The facts constituting the necessity are:

16 Numerous grant applications with merit have been filed seeking  
17 funding through the California Advanced Services Fund, many of  
18 these applications also seeking funding through the federal  
19 American Recovery and Reinvestment Act of 2009 (Public Law  
20 111-5), and these grant applications threaten to exceed the existing  
21 financial limits of the fund. In order to relieve financial pressure  
22 on the fund, enable meritorious projects to go forward, and to  
23 prevent a potential disruptive effect on the grant process, it is  
24 necessary that this act take effect immediately.